



Published by
Health Services Analysis Section
Olympia, WA 98504-4322

PROVIDER BULLETIN

PB 04-03

THIS ISSUE

Vocational Rehabilitation Rule Changes

TO:
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Purpose

This Provider Bulletin (PB) provides more details about the most significant changes made by the 2003 amendments to Washington Administrative Code (WAC) 296-19A. Some of these changes were mentioned in PB 03-08. We recommend you have a copy of the WAC chapter handy as you review this Bulletin. Copies of the WACs were mailed to all vocational providers in May 2003. You can also download and print a copy from the department's website at:

<http://www.leg.wa.gov/wac/index.cfm?fuseaction=chapterdigest&chapter=296-19A>.

For ease of review, the Bulletin follows the WAC sequence and titles.

Providers are responsible for adhering to the entire chapter, including those WAC sections that are not specifically addressed here. Numbering changes, for example, will not be discussed in this Bulletin. All amended sections except WAC 296-19A-137 go into effect 2/1/04.

Except for those sections specifically identified in WAC 296-19A-045, the chapter applies to referrals from both the State Fund and Self-Insured Employers.

Note: Stand Alone Job Analyses (WAC 296-19A-137) were described in Provider Bulletin 03-08 and are not part of this Bulletin. Please refer to PB 03-08 for more information.

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Why did the department make these changes?

The department found that chapter 296-19AWAC could be improved by:

- Clarifying the statutory and regulatory requirements pertaining to vocational rehabilitation services;
- Updating definitions that were not consistent with current practices, best practices, and case law; and
- More clearly describing the department's expectations for service delivery and reports prepared by private sector providers.

What significant changes did the department make by amending chapter 296-19A WAC? What is expected of providers?

The significant changes to the rules are explained in numerical order. The WAC and/or the paragraph number are shown on the left with the title question of the paragraph. The right side of the page describes the language change and whether or not a service delivery change is expected. In subject areas that include only 1 WAC and 1 question (i.e. Qualifications), the WAC and question are listed above the changes. When providers are expected to do something different due to the change, the new action is described.

Definitions – WAC 296-19A-010

(1)(c) What does it mean to say an injured worker is employable?

“Limitations” was changed to “restrictions”. “Restrictions” more clearly describes the expectation that if there are no restrictions caused by the industrial injury or occupational disease, then the worker must be found employable. ”. In practice, no change is required.

(4) What is an injured worker's labor market?

A clarification was added to the third exception for considering a geographic location other than where the worker was last gainfully employed. One of the exceptions clearly states that the current labor market can be used if the worker's move was directly related to the medical condition arising from the occupational illness or injury.

(7) What is a transferable skill?

(8) What is a transferable skills analysis?

The concept of demonstrated skill or behavior has been added to both sections. Demonstrated and applicable skills gained through hobbies or volunteer work can be considered in identifying transferable skills. This is not a new definition in practice.

(9) What are job modifications?

Job modification benefits encourage employers to modify jobs to retain or hire injured workers. To access job modification benefits, an employer-employee relationship must exist. This is not a new requirement.

(10) What are pre-job accommodations?

The purpose of pre-job accommodation benefits is to enable the worker to perform the essential functions of a job. These benefits are used when an employer-employee relationship does not exist. This is not a new benefit or application.

General Information

WAC 296-19A-030 What are the responsibilities of the parties?

Paragraph (5)

Vocational providers must provide copies of closing reports and attachments to injured workers or representatives upon request. This requirement has been moved to the responsibilities WAC.

Department Vocational Rehabilitation Referrals

WAC 296-19A-060(1) What reports does the department require when early intervention services are provided at its request?

Early Intervention progress reports are due every 30 calendar days from the date of the electronic referral. At the time this Bulletin is published, this means that 30 days after the VocLink Connect referral date, the first progress report is due. Subsequent reports are due every 30 calendar days thereafter. Reports may be submitted early to insure timeliness. This is not a new requirement.

WAC 296-19A-060(2)(c) Closing Reports

The Early Intervention closing report must include a medically reviewed job analysis (JA). The JA does not need to be approved, but it does need to be reviewed as part of an early intervention referral. The counselor should contact the claim manager for help with any difficulties in obtaining a medical review of the JA. This is a new requirement.

WAC 296-19A-065 What are ability to work assessment (AWA) services?

Although this is a new WAC, most of the expectations described are not new. One new requirement is that a release to participate in plan development services is required if the recommendation is that a worker should receive plan development services. It is the VRC's responsibility to coordinate with the medical provider to obtain implicit or direct approval that the worker is able to participate or work at a level consistent with previous work patterns. The documentation must be consistent with WAC 296-19A-090.

Vocational testing may be performed during an AWA referral. The department expects these services to be used judiciously when a worker's ability to benefit from plan development may be marginal. The claim manager must pre-authorize vocational testing services. This is neither a new service nor expectation.

VRCs are required to submit an application for Preferred Worker status during an AWA referral if appropriate. The benefits of Preferred Worker status must be explained to injured workers.

WAC 296-19A-070 What is an ability to work assessment?

This section contains some important changes. See below.

WAC 296-19A-070(1)(i)

The complete work history must include addressing any gaps in employment.

WAC 296-19A-070(1)(j)	<p>The first four return-to-work (RTW) priorities listed in RCW 51.32.095(2), frequently associated with Early Intervention (EI) referrals, must be addressed in the AWA report. If these priorities were covered in EI, the results may be referenced in the AWA. However, if the situation has changed since the EI referral, or if no EI referral was completed, these priorities must be addressed during the AWA referral and included in the assessment report.</p>
WAC 296-19A-070(2)(a)(i)	<p>When recommending that a worker is able to work (ATW):</p> <ul style="list-style-type: none"> • a list of job possibilities must be included if the worker is not employable with the employer of record.
WAC 296-19A-070(2)(a)(ii)	<ul style="list-style-type: none"> • A medically approved job analysis (JA) must be provided. When it is not possible to obtain an approved JA, medically approved physical capacities information regarding the worker's ability to perform the job may be used.
WAC 296-19A-070(2)(a)(iii)	<ul style="list-style-type: none"> • If the worker is medically released to the job of injury and previous work pattern, it is not necessary to submit labor market information.
WAC 296-19A-070(2)(b)(i)	<p>When recommending further services appropriate (FSA):</p> <ul style="list-style-type: none"> • The analysis submitted must show how plan development services are both necessary AND likely to enable the worker to become employable at gainful employment. The department expects the VRC to submit evidence showing how the worker will benefit, emphasizing the worker's ability to benefit from plan development. The vocational options and training possibilities need considered to be as specific as possible. It is important to remember that this is not a plan development referral, but a discussion of viable employment and training options for the worker.
WAC 296-19A-070(2)(b)(ii)	<ul style="list-style-type: none"> • The analysis must include the list of jobs ruled out and why, including labor market information if necessary.
WAC 296-19A-070(2)(c)(ii)	<p>When recommending further services are not appropriate (SNA) for the worker:</p> <ul style="list-style-type: none"> • The analysis must include the identification of barriers making it unlikely that the worker would benefit and that the analysis must be consistent with the definition of employable in WAC 296-19A-010(1). • All information supporting the recommendation must be submitted including medical, labor market and or other information. The department needs all the information in order to make a clear decision as early as possible to prevent the inappropriate delivery of services that are not likely to result in the worker's return, or ability, to work. It is important that the VRC show how the worker would benefit from vocational services in the absence of the identified barriers. The claim adjudicator must segregate accepted barriers or conditions from the unaccepted conditions in the claim. The VRC should ask the claim manager for this information if it is not provided at the time of referral.

WAC 296-19A-070(2)(d)

When recommending that a worker has returned to work (RTW), the vocational provider must immediately notify the department orally and submit written documentation within 2 working days. Except for completing the closing report, the provider should not perform any other work on the referral once the worker has returned to work.

WAC 296-19A-090
What are vocational
rehabilitation plan
development services?

The most important change in this section is not a change in expectation, but clear direction that the purpose of plan development is to develop an actual plan to enable a worker to become employable and, hopefully, return to work. This is in keeping with the changes to WAC 296-19A-070. Concerns about a worker's ability to benefit from vocational services are to be answered, as much as possible, during the ability to work assessment.

WAC 296-19A-100
What are vocational
rehabilitation plan
implementation and
monitoring services?

Two important changes were made to this WAC:

WAC 296-19A-100(1)

In addition to submitting progress reports to the department, the vocational provider must give copies of reports, upon request, to the injured worker, or his representative. Plan implementation progress reports are due every 30 calendar days from the date of the electronic referral. At the time this Bulletin is published, this means that 30 days after the VocLink Connect referral date, the first progress report is due. Subsequent reports are due every 30 calendar days thereafter. Reports may be submitted early to insure timeliness.

WAC 296-19A-100(3)

This section works together with WACs 296-19A-070 and 296-19A-090 to promote the purpose of plan development services is to develop an actual plan. However, this WAC acknowledges circumstances sometime require stopping plan development services before a plan is approved. In this situation, the vocational provider must submit a closing report providing:

- The reasons plan development services cannot proceed.
- Supporting documentation, such as goals researched, JAs developed and labor market research conducted.
- An analysis of whether or not further vocational rehabilitation services are necessary and likely for the worker to become employable.

If it is necessary to stop plan development services before a plan is submitted and approved, the VRC must complete an analysis, consistent with the definition of employable (WAC 296-19A-010), and the worker's ability to benefit from vocational services in the future. For example, can the worker reasonably be expected to benefit from any of the vocational possibilities considered to date? *This analysis is considered part of the plan development referral. The claim manager will not close plan development nor create a new referral to complete this analysis.*

WAC 296-19A-110
What are vocational
rehabilitation plan
implementation and
monitoring services?

Changes to this section clarify service delivery expectations:

WAC 296-19A-110(1)

The VRC ensures the worker enters AND progresses in the plan as it was approved.

WAC 296-19A-110(6)

The VRC documents and resolves problems threatening the successful completion of a plan. If the issue cannot be resolved, the VRC must submit documentation of the barriers and attempts to resolve them.

WAC 296-19A-110(7)

The current expectation for delivering job search assistance during the last 60 days of an approved plan has been placed into rule.

WAC 296-19A-110(10)

The VRC must submit an application for Preferred Worker status, if appropriate, as part of the plan implementation referral.

WAC 296-19A-125
What is the purpose of
forensic services?

This new section describes the purpose of forensic services. Forensic services are requested when an independent and objective evaluation of vocational issues is needed. The claim manager can refer for forensic services when previous vocational referrals have not resolved vocational issues or when it is necessary to determine whether a deceased worker was totally and permanently disabled at the time of death. It is important that the evaluation be independent and objective. If the VRC has previously provided any vocational services to a referred worker (on this or other claims), the VRC must decline the referral and notify the claim manager (CM) immediately, recommending the CM close the referral and send the request to another provider.

WAC 296-19A-130
What are the requirements
for a forensic evaluation?

This section of the WAC has changed significantly.

WAC 296-19A-130(1)

The forensic evaluation must analyze all prior vocational services, and the vocational implications of medical conditions, including those in prior claims, pre- and post-injury. The intent of the analysis is to determine whether further vocational services are necessary and likely to enable the injured worker to become employable as defined in WAC 296-19A-010. The VRC should request all claim files if the CM does not provide them at the time of the referral.

WAC 296-19A-130(1)(b)

The VRC clarifies and evaluates the information obtained to complete the referral. This is not a new expectation but is intended to clarify the department's need for more than simply obtaining information. The department needs a professional vocational analysis and opinion.

WAC 296-19A-130(1)(e)

In keeping with paragraph (1)(b), the VRC must perform the services needed to resolve the vocational issues and make a supportable recommendation. This may mean conducting job analyses, labor market surveys, transferable skills analyses or occupational research.

WAC 296-19A-130(4)	In order to maintain the independence and objectivity of the services, a VRC who has provided previous vocational services cannot conduct the forensic evaluation; likewise, the VRC who begins forensic evaluation for a worker is not permitted to provide future vocational services for the specific worker.
WAC 296-19A-135 What reports does the department require when forensic services are provided?	This is a new WAC section. Progress reports and a final report are required when performing forensic services. The progress reports are due 30 days from the date of the referral.
WAC 296-19A-135(1)	Progress reports for forensic referrals must include: <ul style="list-style-type: none"> • A detailed explanation why the referral was not completed, • A summary of the activities completed during the past 30 days, including progress on previously recommended actions, • Identification and analysis of any barriers preventing completion of the referral, and • A description of the actions the VRC intends to take to overcome the barriers and the expected time needed to complete those actions.
WAC 296-19A-135(2)	Final reports for forensic referrals must include: <ul style="list-style-type: none"> • Comprehensive evaluation of the medical and vocational aspects of the claim so the claim adjudicator can make an appropriate vocational decision. • Recommendations and a recommended outcome.
WAC 296-19A-135(2)(a)	When recommending the worker is able to work, the final report must include: <ul style="list-style-type: none"> • Whether the worker is employable with the employer of record or current employer; if not, a list of job possibilities for which the worker is qualified. • Medically approved JA or physical capacity information (if it is not possible to obtain a medically approved JA) • Labor market information that supports the VRC's recommendation unless the worker is medically released to work at the job of injury and work pattern.
WAC 296-19A-135(2)(b)	When recommending that further services are appropriate, the final report must include: <ul style="list-style-type: none"> • An analysis showing how vocational rehabilitation plan development services are necessary and likely to enable the worker to become employable consistent with the definition in WAC 296-19A-010. • The RTW possibilities considered and the reasons they were ruled out, including labor market information when necessary.

WAC 296-19A-135(2)(c)	<p>When recommending that further services are not appropriate, the final report must include:</p> <ul style="list-style-type: none"> • An analysis explaining why vocational services are not appropriate, that such services would not enable the worker to become employable as defined in WAC 296-19A-010. • Identified barriers making it unlikely the worker will benefit from vocational services, • Medical, labor market and/ or other information needed to support the provider's recommendation.
WAC 296-19A-135(2)(d)	<p>When recommending that the injured worker has returned to work, the final report must provide or document attempts to obtain:</p> <ul style="list-style-type: none"> • A description of the job the worker returned to, • The employer's name and return to work date, • The worker's monthly wages, • Clarification of medical and other issues impacting the vocational rehabilitation process as needed.
WAC 296-19A-137 When can the department request a stand-alone job analysis?	<p>Stand-alone Job Analyses were discussed in detail in Provider Bulletin 03-08 which is available at the department's website at http://www.lni.wa.gov/ClaimsInsurance/Providers/ProviderBulletins/default.asp.</p>

Vocational Rehabilitation Tools

WAC 296-19A-140 What information must a provider include in a labor market survey?	<p>Any labor market survey (LMS) submitted in support of a vocational recommendation must include a summary report that is accompanied by the results of the individual employer contacts.</p>
WAC 296-19A-140(1)(a)	<p>The individual contact and summary must include the job title and the Dictionary of Occupational Titles (DOT) code. The department recognizes that the DOT definition may not always accurately describe the job being surveyed. In that case, the occupational code and source from which it was chosen must be provided.</p>
WAC 296-19A-140(1)(f)(i) and (ii)	<p>The LMS summary must indicate whether each contact is positive or negative for the availability of that job. During an ability to work assessment, an LMS is positive if it shows sufficient jobs exist to conclude the worker is employable. If the LMS is part of a plan development referral, the LMS is positive if it shows that the proposed job goals exist in sufficient numbers to conclude that the worker will be employable upon plan completion.</p> <p>VRCs must use their professional judgment to assess whether the job exists in sufficient numbers in the labor market. The VRC's consideration should include, but is not limited to the specific job surveyed, the location, the worker's skill set, the type of injury,</p>

worker's physical capacities and the physical demands of the job. Each LMS assessment is specific to an individual injured worker and his or her situation.

Fluctuations in the economy cannot be the sole consideration in determining job availability or sufficiency.

WAC 296-19A-140(1)(g) As part of the LMS summary, additional information may be submitted as a supplement. This includes published statistical information about jobs and projected job openings.

WAC 296-19A-140(2) The WAC lists data elements that need to be included and submitted to the department for each employer contact. If the information is not available, the VRC should document attempts to obtain it and why it is not available.

The VRC must indicate, for each contact, whether it is positive or negative in support of the job availability. The department recognizes that the assessment at the individual contact level will not be as precise as that of the aggregated summary.

WAC 296-19A-170
What information must a provider include in a job analysis?

There are several significant changes to this section:

WAC 296-19A-170(1) and (6)

A VRC must include the DOT code that describes the analyzed job. The department recognizes that the DOT is not always the best or only source of job descriptions. When the DOT does not provide the most accurate description of the job, then the occupational code, title and source used must be provided.

WAC 296-19A-170(3)

The WAC defines essential job functions as the basic, necessary and integral parts of a job performed by a worker.

WAC 296-19A-170(7)

Environmental hazards need to be described only if they are actually encountered on the job or are important in determining the worker's ability to perform the job.

Job Modification Assistance

The amendments to the rules for job modifications and pre-job accommodations do not change service delivery expectations. Department policy was placed into rule, and, in some cases clarified.

WAC 296-19A-180
When may the department authorize job modifications?

The criteria for authorizing job modifications are outlined. Job modifications may be authorized if:

- The claim is open, and
- The worker is either off work or restricted to light-duty due to the restrictions resulting from the accepted condition, and

- The modification will enable the worker to return to work in either the job of injury or new job, and
- An employer-employee relationship exists.

WAC 296-19A-190

How much is available for job modification assistance?

Five thousand dollars (\$5000) is available per worker per job or job site. Combined costs for job modification and pre-job accommodation for the same return-to-work goal must not exceed \$5000. If money is spent for pre-job accommodation, the money must be deducted from the \$5000 that would otherwise be available for a job modification for the same return-to-work goal.

WAC 296-19A-192

How much is available for pre-job accommodations?

WAC 296-19A-191

When may the department authorize pre-job accommodations?

Pre-job accommodation funds are available when:

- No employer-employee relationship exists, and
- The claim is open or in statutory pension status, and
- The accommodation is medically necessary.

The worker must need the pre-job accommodation to:

- Participate in an approved retraining plan, or
- Perform the essential functions of a job or return-to-work goal consistent with a completed retraining plan, or
- Perform the essential functions of a job or RTW goal consistent with Ability to Work Assessment recommendations.

WAC 296-19A-200

How does an employer apply for job modification assistance?

Vocational providers may help employers complete the application. Vocational providers should bill codes 0823V and 0824V for this service.

An ownership agreement is part of the required documentation.

Qualifications

WAC 296-19A-210 What are the qualifications to provide vocational rehabilitation services to industrially injured or ill workers?

Seven major changes were made to this section:

1. VRCs who were registered with the department as of November 30, 2000 must meet the qualification criteria by November 30, 2010. This provides an additional four years. [WAC 296-19A-210(1)(b)]
2. The assigned VRC is responsible for all vocational work performed on that referral. That responsibility includes the appropriateness of the services, billing and performance measurement. [WAC 296-19A-210(2)(c)]
3. VRC intern supervisors must provide proof of five years full-time experience providing direct vocational services to Washington injured workers. Intern supervisors are responsible for work performed by interns. (Note: VRC supervisors who do not supervise interns do not need to meet this requirement, but must meet all other requirements in subsection 1 of WAC 296-19A-210.) [WAC 296-19A-210(2)(a) and (2)(c)].

4. In addition to possessing either a CRC or ABVE certification, VRCs who want to provide forensic services must provide proof of five years full time experience providing vocational services directly to Washington injured or ill workers. [WAC 296-19A-210(3)]
5. Time limits for non-transitional interns (interns who registered December 1, 2000 or later) are placed into the rule. These interns remain in internship status until either:
 - a. They apply and are approved for VRC status, or
 - b. For up to 12 months following the end of their internship. [WAC 296-19A-210(4)(b)]
6. A total time limit of 72 months full time experience as an intern is allowed. Interns may have more than one internship, but not more than 72 months full time experience. [WAC 296-19A-210(4)(e)]
7. Providers are responsible for applying for, and maintaining, their access and security for accessing department files. When this Provider Bulletin was written, this means providers are responsible for their applications and maintenance for VocLink Connect and Transact Washington. This WAC will apply to any system replacements of those products. VRCs must not share key fobs or passwords. [WAC 296-19A-210(6) and WAC 296-19A-210(8)(e)]

Auditing and Oversight

WAC 296-19A-240

What authority does the department have to audit vocational rehabilitation providers?

The department has the authority to conduct audits at a provider's place of business or away from their place of business. In either case, the provider must make available all records for which they are responsible.

Providers must submit requested materials to the department within 30 days of the request.

WAC 296-19A-260

What are the possible consequences for a provider that does not comply with the RCWs, WACs or department policies?

A provider's provider number can be suspended or terminated. Having a provider number is a business requirement; a provider whose number is suspended or terminated can no longer bill or be paid for services, and cannot receive referrals.

WAC 296-19A-270

In what situation(s) can the department take corrective action?

Subsection 1(a) clearly outlines that the department can order corrective actions against providers for services that do not contribute to completing a vocational referral. Examples are provided in the rule.

Subsections 1(l) and 1(m) concern protection of confidential information. The department expects vocational providers to follow applicable standards established by state and federal law, as well as professional standards (code of ethics) regarding protection and release of confidential information.

Billing and Documentation

WAC 296-19A-400 What records are vocational rehabilitation providers required to maintain?

The start of the 5-year records retention period is the date of the provider's VocLink recommendation. If no VocLink recommendation is made, then the start date of the retention period is the date the closing report is received by the department.

Vocational Disputes

WAC 296-19A-440 What elements of a vocational determination may be disputed?

This section of WAC was changed to place practice into rule. Plan modifications may be disputed, but the modification cannot be used to dispute the original plan or goal.

Appropriate Timing of VocLink Connect Outcome Recommendations

This topic is not related to the amendments to chapter 296-19A WAC and this expectation is not new. The department has established clear expectations regarding the submission of closing reports at the conclusion of a vocational referral.

Vocational providers who are assigned State Fund referrals use VocLink Connect to enter an outcome recommendation at the conclusion of their work on a referral (Provider Update 02-03). The department has found that, in some cases, providers enter the outcome recommendation on VocLink Connect and then delay the submission of the paper report to the department. This results in claim adjudication problems and delays. It also creates inequities between providers in the performance measurements and inaccurate performance data for claim managers.

The department expects the VRC to have *already completed* the report when a VocLink outcome recommendation is made to the department. The paper report should be submitted to the department at the same time that the outcome recommendation is made. The report is considered part of the referral, which is not complete until the report is done.

There are some circumstances when an outcome recommendation is made, and no report is required. Examples include “VRC no longer available” and “VRC declines referral”.

In all other cases, the department expects the paper report to be submitted to the department at the same time the recommendation is made. Evidence that a provider is violating this expectation could result in formal findings with associated corrective actions.

More information

The department’s website has more information regarding vocational rules and other rehabilitation topics: <http://www.lni.wa.gov/ClaimsInsurance/Vocational/default.asp>.